

BEFORE THE NEBRASKA TAX EQUALIZATION AND REVIEW COMMISSION

Linton Revocable Trust, Arthur C. Linton,
Trustee,
Appellant,

Case Nos: 16A 068, 16A 069

v.

Decision and Order Affirming the Decisions
of the Buffalo County Board of Equalization

Buffalo County Board of Equalization,
Appellee.

Background

1. The Subject Properties are two adjacent parcels of agricultural land and horticultural land in Buffalo County. The parcel in Case No. 16A 068 is 86.27 acres. The parcel in Case No. 16A 069 consists of 88.66 acres. The legal descriptions of the parcels are found in the respective Case Files.
2. The Buffalo County Assessor (the County Assessor) assessed the Subject Property in Case No. 16A 068 at \$126,975 for tax year 2016.
3. The Taxpayer protested this value to the Buffalo County Board of Equalization (the County Board) and requested an assessed value of \$89,395 for tax year 2016.
4. The County Board determined that the taxable value of the Subject Property in Case No. 16A 068 was 126,975 for tax year 2016.
5. In Case No. 16A 069, the County Assessor assessed the Subject Property at \$127,000 for tax year 2016.
6. The Taxpayer protested this value to the County Board and requested an assessed value of \$91,665 for tax year 2016.
7. The County Board determined that the taxable value of the Subject Property in Case No. 16A 069 was 127,000 for tax year 2016.
8. The Taxpayer appealed the determinations of the County Board to the Tax Equalization and Review Commission (the Commission).
9. A Single Commissioner hearing was held on September 13, 2017, at the Commission Hearing Room, Sixth Floor, Nebraska State Office Building, 301 Centennial Mall South, Lincoln, Nebraska, before Commissioner Robert W. Hotz.
10. Arthur C. Linton and Jean Linton were present at the hearing.
11. Andrew W. Hoffmeister, Deputy Buffalo County Attorney, Ethel Skinner, County Assessor, and Nora Borer, Deputy County Assessor were present for the County Board.

Applicable Law

12. All real property in Nebraska subject to taxation shall be assessed as of the effective date of January 1.¹
13. The Commission's review of the determination of the County Board of Equalization is de novo.²
14. When considering an appeal a presumption exists that the "board of equalization has faithfully performed its official duties in making an assessment and has acted upon sufficient competent evidence to justify its action."³ That presumption "remains until there is competent evidence to the contrary presented, and the presumption disappears when there is competent evidence adduced on appeal to the contrary. From that point forward, the reasonableness of the valuation fixed by the board of equalization becomes one of fact based upon all the evidence presented. The burden of showing such valuation to be unreasonable rests upon the taxpayer on appeal from the action of the board."⁴
15. The order, decision, determination or action appealed from shall be affirmed unless evidence is adduced establishing that the order, decision, determination, or action was unreasonable or arbitrary.⁵
16. Proof that the order, decision, determination, or action was unreasonable or arbitrary must be made by clear and convincing evidence.⁶
17. A Taxpayer must introduce competent evidence of actual value of the Subject Property in order to successfully claim that the Subject Property is overvalued.⁷
18. The Commission's Decision and Order shall include findings of fact and conclusions of law.⁸

Findings of Fact

19. The Subject Properties are located in Market Area 1, in the Northwest corner of Buffalo County, near Custer County. The Taxpayer owns this quarter section in Buffalo County in addition to approximately 1,000 additional acres in the Southeastern corner of Custer County. The Subject Property is grassland, with no irrigation.
20. The Taxpayer purchased the Subject Property in 2005.

¹ See, Neb. Rev. Stat. §77-1301(1) (Reissue 2009).

² See, Neb. Rev. Stat. §77-5016(8) (2016 Cum. Supp.), *Brenner v. Banner Cty. Bd. of Equal.*, 276 Neb. 275, 286, 753 N.W.2d 802, 813 (2008). "When an appeal is conducted as a 'trial de novo,' as opposed to a 'trial de novo on the record,' it means literally a new hearing and not merely new findings of fact based upon a previous record. A trial de novo is conducted as though the earlier trial had not been held in the first place, and evidence is taken anew as such evidence is available at the time of the trial on appeal." *Koch v. Cedar Cty. Freeholder Bd.*, 276 Neb. 1009, 1019 (2009).

³ *Brenner v. Banner Cty. Bd. Of Equal.*, 276 Neb. 275, 283, 753 N.W.2d 802, 811 (2008) (Citations omitted).

⁴ *Id.*

⁵ Neb. Rev. Stat. §77-5016(9) (2016 Cum. Supp.).

⁶ *Omaha Country Club v. Douglas Cty. Bd. of Equal.*, 11 Neb. App. 171, 645 N.W.2d 821 (2002).

⁷ Cf. *Josten-Wilbert Vault Co. v. Board of Equalization for Buffalo County*, 179 Neb. 415, 138 N.W.2d 641 (1965) (determination of actual value); *Lincoln Tel. and Tel. Co. v. County Bd. Of Equalization of York County*, 209 Neb. 465, 308 N.W.2d 515 (1981)(determination of equalized taxable value).

⁸ Neb. Rev. Stat. §77-5018(1) (2016 Cum. Supp.).

21. In 2011, the County Assessor conducted an inspection of the Subject Property as part of a “neighborhood review.”
22. The Taxpayer argues that the Subject Property in Buffalo County should be assessed at the same amounts per acre as asserted comparable property in Custer County, Market Area 1, which is assessed by the Custer County Assessor at lesser per acre amounts.
23. For tax year 2016, the Buffalo County Assessor and the Custer County Assessor each separately assessed their agricultural land and horticultural land by market areas within each county. The weighted average for grass assessments in Custer County was \$994 per acre, while the weighted average for grass assessments in Buffalo County was \$1,559 per acre.⁹
24. The 4G subclass was the most predominant subclass of grass in each respective market area in both Buffalo County and Custer County.¹⁰
25. For tax year 2016, the 4G subclass of grassland in Market Area 1 was assessed by the Custer County Assessor at \$983 per acre. For tax year 2016, the 4G subclass of grassland in Market Area 1 was assessed by the Buffalo County Assessor at \$1,525 per acre.
26. “The object of Nebraska’s uniformity clause [Nebraska Constitution, Article VIII, Section 1] is accomplished if all of the property within the taxing jurisdiction is assessed and taxed at a uniform standard of value.” *Sarpy Cty. Farm Bureau v. Learning Community*, 283 Neb. 212, 20 (2012).
27. The Taxpayer has provided sufficient information for the Commission to conclude that similar properties owned by the Taxpayer in Buffalo County Market Area 1 and Custer County Market Area 1 were assessed at disparate amounts per acre by the respective County Assessors. However, the Taxpayer has not shown that the Subject Property has been assessed at anything other than a uniform standard within the same taxing jurisdiction, Buffalo County.

Conclusions of Law

28. The Taxpayer has not produced competent evidence that the County Board failed to faithfully perform its duties and to act on sufficient competent evidence to justify its actions.
29. The Taxpayer has not adduced clear and convincing evidence that the determinations of the County Board were arbitrary or unreasonable and the decisions of the County Board should be affirmed.

⁹ 2016 Reports & Opinions of the Property Tax Administrator for Buffalo County, April 2016, page 30. See, https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/r_o_Buffalo.pdf.

¹⁰ See, 2016 Reports & Opinions of the Property Tax Administrator for Buffalo County, April 2016, page 44, at https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/r_o_Buffalo.pdf, and 2016 Reports & Opinions of the Property Tax Administrator for Custer County, April 2016, page 46, at https://terc.nebraska.gov/sites/terc.nebraska.gov/files/doc/r_o_Custer.pdf.

ORDER

IT IS ORDERED THAT:

1. In Case No. 16A 068, the Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is Affirmed. The taxable value of the Subject Property for tax year 2016 is \$126,975.
2. In Case No. 16A 069, the Decision of the County Board of Equalization determining the taxable value of the Subject Property for tax year 2016 is Affirmed. The taxable value of the Subject Property for tax year 2016 is \$127,000.
3. This Decision and Order, if no further action is taken, shall be certified to the Buffalo County Treasurer and the Buffalo County Assessor, pursuant to Neb. Rev. Stat. §77-5018 (2016 Cum. Supp.).
4. Any request for relief, by any party, which is not specifically provided for by this Decision and Order, is denied.
5. Each Party is to bear its own costs in this proceeding.
6. This Decision and Order shall only be applicable to tax year 2016.
7. This Decision and Order is effective on October 6, 2017.

Signed and Sealed: October 6, 2017

Robert W. Hotz, Commissioner